

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 20, 2021 at 11:30 a.m.

1.	<u>21-21572-E-13</u> <u>PGM-1</u>	CINDY FORGRAVE Peter Macaluso	CONTINUED MOTION TO AVOID LIEN OF JONATHAN NEIL & ASSOCIATES, INC. 6-4-21 [15]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Evidentiary Hearing on the Motion to Avoid Judicial Lien is XXXXX.
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This Motion requests an order avoiding the judicial lien of Jonathan Neil & Associates, Inc. ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, CA 95946, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$132,955.81. Exhibit A, Dckt. 18. An abstract of judgment was recorded with Nevada County on November 21,

2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

Creditor's Opposition

Creditor opposes the Motion to Avoid Judicial Lien on the basis that:

- A. Debtor's claim of valuation is not supported by competent evidence;
- B. Debtor has apparently misrepresented to the court facts evidencing the true balances of any existing loans; and
- C. Remaining equity would leave sufficient funds to pay Creditor's lien.

First, Creditor contends that the motion and supporting declaration are devoid of any evidence that might support Debtor's "self-serving and conclusory statement that the Property is worth \$598,000.00." Dckt. 49, Opposition, 2:24-25. There is no appraisal supporting the alleged current value, no statement as to how the value was determined, and no reference to any outside source for a verification of value. *Id.* Creditor further questions Debtor's line of reasoning that "being a homeowner renders one qualified or competent to offer admissible evidence as to property valuation." *Id.*

Second, Debtor claims a mortgage balance in the amount of \$102,000.00; yet Creditor asserts that there is no evidence of any such outstanding voluntary lien on the Property and that Debtor has failed to submit recent statements of the loan balance. *Id.*, at 3:10-12.

Third, even admitting, for the sake of discussion, that Debtor's representations of the allowable homestead exemption and loan balance are accurate, there would be sufficient equity in the Property to satisfy Creditor's lien. *Id.*, at 3:13-15. On Zillow.com, the value of the Property is estimated at \$1,003,000.00. Dckt. 50, Ex. 1.

Debtor's Reply

Debtor contends that both the "Zillow report" and Creditor's declaration concerning the Zillow estimate are inadmissible hearsay. Dckt. 60. Debtor also explains that she determined the value of the Property by personally viewing it for defects and by accounting for the fact that it is a modular home that depreciates in value every year. *Id.* Debtor has testified to damages to the Property including leaks in the roof, water damages to the kitchen floor, the need for dry-wood replacement in the master bedroom, and leaks in the sky lights, which are also not squared, causing cracks in the wall. Dckt. 17, declaration, ¶ 9.

DECISION

As the owner, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R.*

Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dckt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and providing the court with copies of a real estate website. The copies are not accompanied by the declaration of an appraiser but that of Debtor's Counsel. Dckt. 50. In his declaration Counsel states that "the office ran a search for the Property," and that a true and correct copy of the printout has been included. There is no personal knowledge testimony nor does Counsel explain how this report survives the evidence rules on hearsay.

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

Determination of the Judgment Lien

The court has determined that Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730 is in the amount of \$460,000. The Debtor states under penalty of perjury that the fair market value of the property subject to Creditor's judicial lien is \$650,000. Debtor then seeks to reduce the fair market value to a net sales proceeds value by deducing 8% for costs of sale.

The term "fair market value" is one commonly used in bankruptcy cases and well known to practitioners. One simple definition is the fair market value of a property is the price which a willing buyer, under no compulsion to purchase, and which a willing seller, under no exigency to sell will pay and accept for a sale of the property. As explained by the California Supreme Court in *City of San Diego v. Neumann*, 6 Cal. 4th 738, 744 (1993):

In striking this balance between the public's need and the owner's loss, our Legislature has provided that the measure of compensation for property taken pursuant to the government's powers of eminent domain is its "fair market value."

(Code Civ. Proc., § 1263.310.) It has defined "fair market value" as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, *each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*" (§ 1263.320, italics added.)

It is not a net sales price.

The court makes the following arithmetical computation required by 11 U.S.C. § 522(f)(2)(A):

FMV	\$650,000.00	
Homestead Exemption	(\$460,000.00)	
Mortgage Schedule D, Dckt. 1 Debt Incurred 3/31/2020 No Recording Date Provided	(\$102,000.00)	Howard Allen Wood Separate Property Trust
Judgment Lien Recorded 11/21/2019 Exhibit A, Dckt. 18	(\$132,955.81)	Jonathan Neil & Associates
	=====	
Surplus Over/(Impairment of Homestead) Exemption	(\$44,955.81)	

However, in connection with another Motion to Avoid Judicial Lien filed by Debtor, DCN:PGM-2, the court was presented with evidence that the Property at issue has a value of \$625,000.

Creditor Cadles of West Virginia, LLC provided expert testimony of an appraiser. The expert's Appraisal Report, on page 2 of 32, the Summary of Important Facts & Conclusions, the appraiser states that this property was purchased on May 26, 2017, for \$625,000. Exhibit 2, Dckt. 57. It is commonly known in this jurisdiction that real property values have dramatically increased over the past four years, and a property worth \$625,000 in 2017 would be dramatically worth more now than four years ago. It is not clear whether the damage has occurred since 2017 or the property was purchased with the damage in 2017.

In his appraisal, Creditor's expert has used some manufactured homes and some "ranch" homes. The manufactured homes are stated by Creditor's expert to be similar in quality of construction, with the size of the lots being substantially smaller – Debtor's manufactured home being on 49.84 acres and the two comparables being on 10 acres (a +\$200,000 adjustment) and 5 acres (a +\$250,000 adjustment). Appraisal, p. 18-19 or 32, Exhibit 2; Dckt. 57.

Debtor Status Report

On October 5, 2021, Debtor filed a status report. Debtor disputes the Fair Market Value conclusions drawn by the Creditor's Expert's Opinion. Debtor's Lay Opinion determines the home to be \$598,000.00 where Creditor's Expert's Opinion determines it to be \$670,000.00. Debtor requests an evidentiary hearing to allow Debtor's counsel to clarify the "triple wide manufactured home" in "fair" condition.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXX**

2.	<u>21-21572-E-13</u> <u>PGM-2</u>	CINDY FORGRAVE Peter Macaluso	CONTINUED MOTION TO AVOID LIEN OF CADLES OF WEST VIRGINIA LLC 6-4-21 <u>[21]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Evidentiary Hearing on the Motion to Avoid Judicial Lien is XXXXX.
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This Motion requests an order avoiding the judicial lien of Cadles of West Virginia LLC ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$282,628.05. Dckt. 23, Ex. B. An abstract of judgment was recorded with Nevada County on December 15, 2020, that

encumbers the Property. *Id.* On May 25, 2021, Creditor filed Claim 2-1 for \$295,614.50, which includes the principal amount of the judgment plus accrued interest. Dckt. 32, declaration, ¶ 8.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

Creditor's Opposition

Creditor opposes the Motion on the basis that:

- A. The value of the Property is greater than Debtor states;
- B. Liquidation costs should not be deducted to determine fair market value;
- C. Debtor's homestead is not fully impaired by Cadles' lien; and
- D. Creditor Jonathan Neil & Associates did not timely object to Debtor's claim of exemption.

In opposition to Debtor's valuation of the property, Creditor submitted a professional appraisal report by Daniel R. Ketcham, a certified real estate appraiser. Mr. Ketcham sets forth the fair market value of the Property, as of April 29, 2021, at \$800,000. Dckt. 57, ¶ 4. Mr. Ketcham in part bases his appraisal on the recent dramatic upward price trends in the area. Dckt. 57, Ex. 2, at 6. Since Debtor's purchase of the Property in May 2017 for \$625,000, overall market appreciation in Western Nevada County has been approximately 44.8%. *Id.*, at 4. However, in the appraisal report, Mr. Ketcham states under the heading "Extraordinary Assumption" that the client requested no interior inspection, because, reportedly, property ownership via legal counsel denied a request for an on-site inspection. *Id.*, at 3. Mr. Ketcham discloses that the use of this assumption might have affected results. *Id.* Debtor has testified to the existence of variegated and substantial damage to the interior of the home. Dckt. 60.

Second, Creditor opposes Debtor's attempt to discount the "costs of sale" from the fair market value of the Property. The court has preciously noted this issue:

In the notes to line 1.1 in Schedule A/B, Debtor states that the Property has a fair market value of \$650,000.00, which Debtor discounts down to \$598,000.00 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds.

Civil Minutes, June 29, 2021; Dckt. 45.

Third, Creditor argues that Debtor's homestead is not fully impaired by Creditor's lien. Assuming the FMV of the Property is \$800,000.00, and that Debtor's permissible homestead exemption is \$453,020.83 (the median sale price in Nevada County for 2020), Creditor shows that Debtor has sufficient equity to satisfy at least some of Cadles' lien, after accounting for the \$147,742.00 judicial lien

of Jonathan Neil & Associates as well as the alleged \$102,000.00 consensual lien of Howard Allen Wood. Dckt. 55, at 7. Thus Creditor asserts there is sufficient equity to protect Cadles' lien as a secured claim in the sum of \$97,236.89. *Id.*

Fourth, Creditor alleges that Jonathan Neil & Associates failed to timely object to Debtor's claim of exemption and that accordingly the claim of exemption is good against this creditor. *Id.*, at 8. In the event that Jonathan Neil & Associates' judicial lien is avoided in its entirety, Creditor asserts that its judicial lien would be unavoidable in the sum of \$244,979.17 and avoidable in the sum of \$50,635.33. *Id.* In the alternative, Creditor requests the court to deny the Motion, finding that Cadles has a secured lien in the amount of \$97,236.89.

Debtor's Reply

Debtor asserts that her estimate of \$598,000.00 as the FMV of the Property is based on her lay opinion of the median value of properties in the county, although this statement contradicts Debtor's notes to line 1.1 in Schedule A/B, which explained that the \$598,000.00 figure was calculated by discounting 8% from the FMV due to "costs of sales." Dckt. 62, ¶ 3. Debtor also confusedly states that her belief of the median value of properties supports an exemption of \$557,000.00, while simultaneously adopting Creditor's calculation of median value of \$508,000.00 for use as her homestead exemption. *Id.*, at 2:4-6 and 3:20.

DISCUSSION

As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dckt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and provides the court with the appraisal and Declaration of Daniel R. Ketcham. Mr. Ketcham testifies under penalty of perjury that in creating the appraisal he inspected the exterior of the Property, analyzed public data on the Property, gathered and analyzed market data with an emphasis on comparable sales and other factors. Declaration; Dckt. 57, at ¶ 3. After accounting for this information, Mr. Ketcham concludes that the fair market value

of the Property as of April 29, 2021 is \$800,000. *Id.*, at ¶ 4. However, Mr. Ketcham does note that the appraisal does not include information as to the conditions of the interior of the Property.

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

Determination of the Judgment Lien

The court has determined that Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730 is in the amount of \$460,000. The Debtor states under penalty of perjury that the fair market value of the property subject to Creditor's judicial lien is \$650,000. Debtor then seeks to reduce the fair market value to a net sales proceeds value by deducing 8% for costs of sale.

Though Debtor's appraiser has an opinion of \$800,000 of value, such is a "drive by" exterior inspection of the Property. Exhibit 2, Dckt. 57. Debtor asserts that the property has serious water damage and roof leak issues, and estimates that there is a \$40,000 repair bill.

Debtor's \$650,000 figure is closer to the \$460,000 median single-family home price in Nevada County determined by the court in ruling on Creditor's objection to Debtor's claim of exemption.

In looking at Creditor's expert's Appraisal Report, on page 2 of 32, the Summary of Important Facts & Conclusions, the appraiser states that this property was purchased on May 26, 2017, for \$625,000. It is commonly known in this jurisdiction that real property values have dramatically increased over the past four years, and a property worth \$625,000 in 2017 would be dramatically worth more now than four years ago. It is not clear whether the damage has occurred since 2017 or the property was purchased with the damage in 2017.

In his appraisal, Creditor's expert has used some manufactured homes and some "ranch" homes. The manufactured homes are stated by Creditor's expert to be similar in quality of construction, with the size of the lots being substantially smaller – Debtor's manufactured home being on 49.84 acres and the two comparables being on 10 acres (a +\$200,000 adjustment) and 5 acres (a +\$250,000 adjustment). Appraisal, p. 18-19 or 32, Exhibit 2; Dckt. 57.

Considering the information in the Appraisal Report and making adjustments for the undisputed damage testified to by Debtor, the court computes the fair market value of the Property to be \$677,500.00. The court concludes that the value based on the Appraisal Report, exterior inspection, is \$757,500, and the value is then adjusted (\$80,000), the court concluding that Debtor's estimate of construction repairs in 2021 of (\$40,000) is not reasonable for the damage described.

The court makes the following arithmetical computation required by 11 U.S.C. § 522(f)(2)(A):

FMV	\$800,000.00	
Homestead Exemption	(\$460,000.00)	
Mortgage Schedule D, Dckt. 1 Debt Incurred 3/31/2020 No Recording Date Provided	(\$102,000.00)	Howard Allen Wood Separate Property Trust
Judgment Lien Recorded 11/21/2019 Exhibit A, Dckt. 18	(\$132,955.81)	Jonathan Neil and Associates
Judgment Lien Recorded 12/15/2020 Proof of Claim 2-1	(\$295,614.00)	Cadles of West Virginia LLC
	=====	
Surplus Over/(Impairment of Homestead) Exemption	(\$190,569.81)	

Thus, the judgment lien is avoided in its entirety, there being no value in the Property for Creditor's judgment lien in excess of the senior consensual liens, judgment lien, and homestead exemption, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXX**

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 9, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXX.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Plan relies on Motions to Avoid Liens.

DISCUSSION

Trustee objects that the Debtor's Plan relies on Motions to Avoid Liens. *See* Dckt. 15 and 21. The Trustee is not certain that Debtor can afford the plan payments unless these motions are successful. These motions have been set for hearing at 2:00 p.m. on July 20, 2021.

Objection filed by Creditor Cadles of West Virginia

The deadline for filing an Objection was set for June 11, 2021. Creditor filed their Objection on June 24, 2021. Dckt. 31. Notwithstanding this untimeliness, the court will treat this objection as a pleading in support of Trustee's Objection providing supplemental information which identifies a specific claim that is the subject of Trustee's Objection.

Creditor objects on the basis that the proposed Plan does not provide for Creditor's secured claim. Creditor asserts that a money judgment was entered in favor of Creditor against Debtor in the Nevada County Superior Court in the principal amount of \$282,628.05, with the abstract of judgment having been recorded on December 15, 2020 in the Official Records of Nevada County. The money judgment entered against the Debtor and a copy of the Abstract of Judgment are attached to Creditor's Proof of Claim 2-1. Debtor has misclassified Creditor as an unsecured debt in an attempt to modify Creditor's claim and seeks to avoid the judgment lien.

Creditor argues that this case was filed in bad faith and alleges that Debtor's sole purpose in filing for Chapter 13 bankruptcy is to avoid the sale of her residence under Creditor's judgment lien. Creditor explains that after summary judgment was granted in its favor in the underlying state court action, the Debtor quit-claimed her interest in the subject property to third parties, forcing Creditor to bring a fraudulent transfer lawsuit in Nevada County Superior Court. In response to that lawsuit, the third parties quit-claimed their interests back to Debtor and the bankruptcy filing followed. ^{FN.1.}

FN. 1. That a judgment debtor would file bankruptcy to avoid the sale of a residence by a judgment creditor is not surprising or improper. However, when the judgement debtor begins transferring away assets and fraudulent transfer litigation ensues, that may be a different story.

Creditor further asserts that Debtor has substantially undervalued her residence which sits on 49 acres.

Decision

Debtor's two Motions to Avoid the Liens are currently pending and with respect to any discovery valuation issues, these will be addressed through those motions and as such Creditor can prosecute its part of the contested matter as appropriate.

The court continued this Objection for to be heard on the same date and time as the individual Motions to Avoid Lien set for hearing at 2:00 p.m. on July 20, 2021.

Creditor's information relating to the Trustee's Objection piqued the court's curiosity about what is being alleged concerning this real property. On Schedule A/B Debtor lists the residence in Penn Value of \$598,000 on Schedule A/B. Dckt. 1 at 13. However, in the notes corresponding with this listing, Debtor states that property has a Fair Market Value of \$650,000, which the Debtor discounts down to \$598,000 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds. Thus, we begin with a value of \$650,000.

On Schedule C Debtor claims an exemption of \$557,000 in the Property, citing to California Code of Civil Procedure § 704.730. California Code of Civil Procedure § 704.730 provides, as of January 1, 2021, that the homestead exemption amount is the greater of the median sale price for a single-family home in the county in which it is located or \$300,000. Debtor asserts that the median sales price for homes countywide in Nevada County for 2020 was \$557,000.

On Schedule D, Debtor lists a secured claim in the amount of (\$102,000) which encumbers the Property with a deed of trust or mortgage. Presumably this predates Creditor's judgment lien.

Debtor filed the Motion to Avoid the judgment lien on June 4, 2021. In addition to the deed of trust, Debtor identifies another senior judgment lien in the amount of (\$132,955), which Debtor is also seeking to avoid in another Contested Matter. In the Objection, Creditor asserts that the value of the property is much greater than the \$598,000 asserted by Debtor, noting that in addition to a home, it includes forty-two (42) acres.

This appears to be a situation that may lead to an interesting battle of experts, or with the experts' information in hand, the parties coming up with a resolution consistent with California and Federal law.

A look at Schedule I provides some interesting information. Debtor is unemployed and states having monthly income of \$600 from rental property or business and \$1,800 in unemployment compensation. Dckt. 1 at 30-31. No profit and loss statement, as required in ¶ 8a of Schedule I is provided for the \$600 in monthly income.

Looking at Schedule J, Debtor lives a very tight, almost destitute lifestyle. She has gas, repair and maintenance expenses of only (\$130) a month, with a vehicle insurance expense of (\$230) a month. *Id.* at 33. On Schedule A/B, Debtor states under penalty of perjury that she has no vehicle, but drives a 2008 Land Rover for which "title" is in Peter Baga, as is the loan on the vehicle. Further, that this vehicle "Does not belong to Debtor." *Id.* at 14.

On the Statement of Financial Affairs Debtor states under penalty of perjury that she was unemployed in 2019, 2020, and now 2021. *Id.* at 35-37.

Trustee's Objections to Exemption Pending

Trustee notes that two objections to exemptions are pending, one for July 20, 2021 and one for August 10, 2021. Dckt. 51.

July 20, 2021 Hearing

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

Objection to Exemption

Debtor's Plan relies on two Motions to Avoid Liens. In turn, the avoidance could only be successful depending on the amount of Debtor's allowed homestead exemption.

The court having found that Debtor's homestead exemption is \$460,000, one Motion to Avoid Lien was granted only in part, leaving creditor Jonathan Neil & Associates with an \$88,000 secured claim that is not provided for in this plan. The court avoided the judgment lien of Cadles of West Virginia, LLC in its entirety.

August 17, 2021 Hearing

At the August 17, 2021 hearing, the court continued this to be conducted in conjunction with the continued hearings on the Motions to Avoid Liens.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXX**

4. [21-21572-E-13](#) **CINDY FORGRAVE** **CONTINUED OBJECTION TO**
[HMW-1](#) **Peter Macaluso** **CONFIRMATION OF PLAN BY CADLES**
OF WEST VIRGINIA LLC
6-24-21 [31]

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 9, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan, as a supplement to the Chapter 13 Trustee’s Objection, is **XXXXXXX .**

Creditor Cadles of West Virginia (“Creditor”), opposes confirmation of the Plan on the basis that Plan seeks to avoid its lien over Debtor’s property. The Objection was untimely filed and the court has taken it as a pleading in support of Trustee’s timely filed Objection to Debtor’s Plan. The court discusses Creditor’s argument as part of the Trustee’s Objection set for hearing on June 29, 2021 at 2:00 p.m.

Objection to Exemption

Debtor’s Plan relies on two Motions to Avoid Liens. In turn, the avoidance could only be successful depending on the amount of Debtor’s allowed homestead exemption.

August 17, 2021 Hearing

At the August 17, 2021 hearing, the court continued this to be conducted in conjunction with the continued hearings on the Motions to Avoid Liens.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXXXX**

5. [21-22545](#)-E-13 **DARYLL DESANTIS** **STATUS CONFERENCE RE: MOTION**
[SMJ](#)-4 **Scott Johnson** **TO DISMISS CASE**
8-17-21 [\[89\]](#)

Debtor's Atty: Scott Johnson

Notes:

Set by order of the court filed 9/15/21 [Dckt 130] to be heard in conjunction with other matters on the calendar, if the bankruptcy case has not been previously dismissed upon the stipulation of the Parties.

The Status Conference is XXXXXXX

OCTOBER 20, 2021 HEARING

The Parties have reported to the court that they have achieved the terms of a stipulation for the dismissal of this case and the imposition of reasonable conditions of dismissal, 11 U.S.C. § 349(a) with respect to the refiling of another bankruptcy case.

The terms of that stipulation are set forth in **XXXXXXX**

REVIEW OF MOTION FILED BY DEBTOR

This Motion to Dismiss this Chapter 13 bankruptcy case has been filed by Daryll Desantis (“Movant”), the Chapter 13 Debtor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The Debtor has not previously converted this case to Chapter 13 from Chapter 7, Chapter 11, or Chapter 12.
- B. The Debtor has the right to dismiss this case under the provisions of 11 U.S.C. §1307(b), which states that: “[o]n request of the debtor at any time, if the case has not been converted under §§706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.”
- C. Debtor has not previously filed any other bankruptcy cases.

- D. The Debtor has no liquidated, non-contingent debts. The only potential creditor is MedMen Enterprises, Inc. (“MedMen”), a marijuana retailer.
- E. Debtor’s largest asset is claims against MedMen for securities and MedMen securities, which is traded on a Canadian stock exchange because such businesses are illegal under U.S. federal law.
- F. Although §1307(b) provides an “absolute” right to voluntarily dismiss a chapter 13 case, where other motions are pending the Court has the discretion to grant such other motions. Notwithstanding the “absolute” right, dismissal is in the best interest of creditors and the estate as this bankruptcy case is ultimately just a two party dispute between Debtor and MedMen and should be litigated in state court.
- G. Furthermore, based on the prevalence of marijuana, cause would likely exist to dismiss this case if this case were converted to chapter 7.

The Declaration of Daryll Desantis was filed in support of the Motion testifying, under penalty of perjury, that as of the date of filing his bankruptcy petition, Debtor had no credit card debt, no medical bills, no other potential judgments outstanding, and there is no final judgment in my case against MedMen. Declaration, ¶ 27. According to Debtor, to the extent that MedMen is a “creditor” in this case, its claim relates directly to proceeds from the sale of two medical marijuana businesses and their inventory. *Id.*, ¶ 28. Debtor testifies that the largest asset is my securities fraud against Medmen and MedMen stock, which is traded on a Canadian stock exchange. *Id.*, at ¶ 29.

Trustee’s Non-Opposition

On August 24, 2021 Trustee filed a Non-Opposition to Debtor’s voluntary dismissal stating that no creditors have filed a Proof of Claim, including MedMen Enterprises, Inc. whom Debtor has an ongoing litigation in Superior Court of Arizona. Dckt. 102. Trustee further adding that Debtor failed to appear at the Meeting of Creditors held on August 19, 2021 (which was continued to September 2, 2021) and has failed to file and serve a plan. The first plan payment is due on August 25, 2021, and to date, no plan payments have been made. *Id.*

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

On request of the debtor at any time, if the case has not been converted under §§706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Here, Debtor seeks to dismiss this case and continue pursuing his claims against MedMen in the Superior Court of Arizona. MedMen being the only potential creditor of Debtor. It seems Debtor filed this case to prevent potential incarceration after being unable to pay \$10.3 million pursuant to an order from the Superior Court of Arizona which required Debtor to deposit over \$10.3 million in the court registry or face potential incarceration if the trial court so determined. Declaration, ¶ 23. This particular transaction is based on the sale of two medical marijuana business owned and operation by Debtor and third party Charles Michael Colburn. (The court notes that marijuana is a controlled substance and its sale is illegal under federal law, but is legal, when properly registered and operated, in the State of California.)

There are several pending issues in this case. MedMen filed a Motion to Convert from Chapter 13 to Chapter 7 on July 28, 2020, SW-4, set for hearing the same day as this Motion to Dismiss. Dckt. 28. Debtor opposes such conversion on the basis that the prevalence of marijuana in this case warrants dismissal rather than conversion as the related activities are against federal law; the case is nothing more than a two-party dispute that is better dealt with in the state court; Debtor did not file the case in bad faith; and Debtor is not eligible for Chapter 13 relief under § 109(e).

Then on August 3, 2021, MedMen filed a Motion to Transfer Case/Proceeding to Another District, SW-5; also set for hearing on the same day as this Motion to Dismiss. Dckt. 43. Through that Motion, Creditor seeks to transfer Debtor’s bankruptcy case to Arizona alleging that Debtor purchased his Folsom residence with proceeds of the marijuana sale now in dispute at the State Court Action in Arizona. Creditor further alleges that Debtor is a resident of Arizona because he still has an Arizona driver’s license and Creditor believes that Debtor remains registered to vote in Arizona. Lastly, transfer is consistent with judicial economy because there are significant overlapping issues between Debtor bankruptcy case and third party Mr. Colburn’s bankruptcy case which was filed in Arizona, and Creditor’s counsel and potential witnesses are primarily located in Arizona.

Both Trustee and Debtor oppose the Motion to Transfer. Trustee opposes on the grounds that Debtor properly filed in this District since he has been a resident for at least 180 days before the filing of the Petition and transfer to another district is not in the best interests of Debtor or creditors. Dckt. 75. Debtor opposes on the grounds that Debtor was domiciled in Folsom, California for at least 180 days prior to filing the petition; transfer is not convenient where the parties and potential assets are both in California. Dckt. 86.

At the hearing, the court addressed with the Parties concerns of whether a Chapter 7 Trustee could effectively administer this estate in light of the asserted potential assets but having no assets for employment of professionals. Additionally, given that the universe of active creditors in this case is very compact, and are involved with the nonbankruptcy litigation for tens of millions of dollars, it may be that proceeding outside of bankruptcy is in everyone’s best financial interests. Additionally, the under

funded Chapter 7 Trustee may, based upon the large dollar disputes between the Debtor and this universe of creditors, end up not being able to administer the assets consistent with his financial duty to the estate other than to abandon them back to the Debtor with the Chapter 7 estate having a lien on such rights and claims for a specified amount/percentage.

The also court notes that after the August 31, 2021 hearing on this Motion and prior to the court entering the order continuing the hearing, on September 1, 2021, the Ninth Circuit Court of Appeals issued a decision addressing a Chapter 13 debtor's right to dismiss the Chapter 13 case, and Ninth Circuit ruling that the Supreme Court decision in *Law v. Siegel*, 571 U.S. 415 (2014) effectively overruled the prior Ninth Circuit Decision in *In re Rosson*, 545 F.3d 764 (9th Cir. 2008). See *Nichols v. Marana Stockyard & Livestock Market, et al. (In re Hughes)*, Ninth Circuit No. 20-60043 (9th Cir. 2021).

6.	<u>21-22545-E-13</u> <u>SW-5</u>	DARYLL DESANTIS Scott Johnson	CONTINUED MOTION TO TRANSFER CASE/PROCEEDING TO ANOTHER DISTRICT 8-3-21 [43]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 3, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Transfer Case/Proceeding to Another District has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Transfer Case/Proceeding to Another District is XXXX.

MedMen Enterprises, Inc. ("Creditor") seeks to transfer Debtor's bankruptcy case to Arizona alleging on the basis that Debtor improperly filed the case in this district in order to avoid sanctions imposed upon Debtor and third party Michael Colburn after Debtor failed to comply with the Arizona's Superior Court order to deposit over \$10 million allegedly belonging to Creditor on the state court's

registry.

The Motion states with particularity the following grounds for relief:

1. Debtor purchased his Folsom residence with proceeds of the marijuana sale now in dispute at the State Court Action in Arizona.
2. Creditor further alleges that Debtor is a resident of Arizona because he still has an Arizona driver's license and Creditor believes that Debtor remains registered to vote in Arizona.
3. Transfer is consistent with judicial economy because there are significant overlapping issues between Debtor bankruptcy case and third party Mr. Colburn's bankruptcy case which was filed in Arizona, and Creditor's counsel and potential witnesses are primarily located in Arizona.

Trustee's Opposition

Trustee opposes on the grounds that Debtor properly filed in this District since he has been a resident for at least 180 days before the filing of the Petition and transfer to another district is not in the best interests of Debtor or creditors. Dckt. 75. Trustee notes that Creditor has failed to provide evidence that Debtor has a residential address or owns a residence in Arizona; and points to the court that Creditor acknowledges that Debtor a residence in Folsom, which the Debtor is also alleging as his residence.

As it pertains to Debtor, Trustee informs the court that Debtor has failed to provide § 521 documents and tax transcripts or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.

Trustee believes that it is in the best interest of creditors and the convenience of the Debtor that the case remains in the Eastern District of California.

Debtor's Opposition

Debtor opposes on the grounds that Debtor was domiciled in Folsom, California for at least 180 days prior to filing the petition; transfer is not convenient where the parties and potential assets are both in California. Dckt. 86. In his Declaration, Debtor testifies that he has lived in California for more than two years. Dec., ¶ 3; Dckt. 87.

APPLICABLE LAW

The proper venue for the commencement of a case under title 11 is set forth in section 1408 of title 28, United States Code. That section states that a case, other than a case ancillary to a foreign proceeding (which is governed by section 1410 of title 28), may be commenced in the district

- in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a

longer portion of such 180-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district;

9 Collier on Bankruptcy P 1014.02 (16th 2021).

Federal Rule of Bankruptcy Procedure 1014(a) authorizes a court in which a petition has been properly filed to transfer the case to another district “if the court determines that the transfer is in the interest of justice or for the convenience of the parties.” Fed. R. Bankr. P. 1014(a).

Where a case has been filed in an improper district, the Federal Rules of Bankruptcy Procedure 1014(a)(2) provides that “the court ... may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or the convenience of the parties.” Fed. R. Bankr. P. 1014(a)(2).

As analyzed in *Collier on Bankruptcy*,

The standard to be applied in deciding whether to transfer an improperly filed case is whether the transfer would be “in the interest of justice or for the convenience of the parties.” If not, the case probably must be dismissed. Since the standard is the same as the standard applied to the transfer of a properly filed case, presumably similar considerations will come into play in determining when a transfer is appropriate. Since retention of the improperly filed case is probably no longer an option, however, a court will also have to consider whether the burdens imposed by dismissal will outweigh any inconvenience of a transferred venue. For example, if the case is dismissed and must be refiled, potential preference or fraudulent conveyance recoveries may be lost. Moreover, certain benefits of the automatic stay may be lost as well.

9 Collier on Bankruptcy P 1014.03 (16th 2021).

The criteria traditionally employed in determining whether to transfer a case are:

- the proximity of creditors of every kind to the court;
- the proximity of the debtor to the court;
- the proximity of the witnesses necessary to the administration of the estate;
- the location of the assets;
- the economic administration of the estate; and
- the necessity for ancillary administration if liquidation should result.

In re Commonwealth Oil Refining Co., 596 F.2d 1239 (5th Cir. 1979), cert. denied, 444 U.S. 1045 (1980). Accord *In re Dodart Props., LLC*, 2009 U.S. Dist. LEXIS 92522 (D. Utah Sept. 30, 2009) (assets, most creditors and witnesses in district to which case transferred); *In re Enron Corp.*, 274 B.R. 327 (Bankr. S.D.N.Y. 2002); *In re MacDonald*, 73 B.R. 254 (Bankr. N.D. Ohio 1987); *In re Baltimore Food Sys., Inc.*, 16 C.B.C.2d 578, 71 B.R. 795 (Bankr. D.S.C. 1986); *In re Walter*, 47 B.R. 240 (Bankr. N.D. Fla. 1985); *In re Almeida*, 37 B.R. 186 (Bankr. E.D. Pa. 1984).

DISCUSSION

Here, the court has been presented with three different Motions all with different outcomes as to this case. Debtor who has a right to dismiss, seeks dismissal of this case, and seems that he will continue litigating the Arizona start action. The court also has an overzealous Creditor who seeks conversion and then transfer. Both outcomes are meant to be convenient to Creditor.

Debtor filed his Schedule A/B on August 26, 2021, fifty-four days after this case was filed. Dckt. 109. Debtor's significant assets appear to be his ownership of restricted MedMen Enterprises, Inc. and Delsantro, LLC claims against MedMen Enterprises, Inc. valued at \$31,000,000 (including the stock and note payable). Debtor affirmatively states under penalty of perjury that he has no interest in any real property. Schedules A/B, Dckt. 109 at 3.

On Schedule D, Dckt. 51, Debtor states he has no creditors with secured claims. Debtor lists only one creditor, that is MedMen Enterprises, Inc., with a disputed claim relating to the ongoing Arizona litigation.

While filing Schedules, Debtor has not filed the required Statement of Financial Affairs. In the Motion to Convert this case to one under Chapter 7, Creditor states that on January 14, 2021, Debtor purchased a \$1,500,000 home, that being 382 Serpa Way, Folsom, California (which Debtor states on the Petition is his residence address). Motion to Convert, ¶ 52; Dckt. 28. Creditor directs the court to Exhibit 36, which is identified as the deed transferring the Serpa Way property to Debtor. Dckt. 33. In the upper right hand corner of the deed is a January 14, 2021 recording date. It list Debtor as having the property granted to him as a single man.

While Debtor asserts that filing of bankruptcy in the Eastern District of California is improper because Weed is at the heart of his assets, Creditor provides the court with a deluge of documents. It appears that Debtor and Creditor seek to have extensive litigation.

While the Weed aspect does not cause the court great concerns given rulings of the Ninth Circuit Court of Appeals, what does cause concerns is that if the case is converted, a bankruptcy trustee with no identifiable assets will be facing the fire hose of pleadings from Creditor.

If Debtor is sincere in stating that filing bankruptcy anywhere is improper (even Weed loving California) because it is illegal under federal law, then one possible solution is Debtor consent to a five year ban on filing another bankruptcy case, freeing Debtor up to litigate his rights and claims against Creditor. If filing bankruptcy is improper as a matter of federal law as Debtor contends, then such a five year bar is of no consequence to Debtor.

August 31, 2021 Hearing

At the hearing, the court continued the hearing to be conducted in connection with the hearing on the Debtor's Motion to Dismiss this case.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXX**

7. [21-22545](#)-E-13 DARYLL DESANTIS CONTINUED NOTICE OF INTENT TO
Scott Johnson DISMISS CASE
7-13-21 [3]

The Notice of Intent to Dismiss the Case is ~~XXXXX~~.

On July 13, 2021, the court issued a notice of intent to dismiss the bankruptcy case for failure to file (1) Statement of SSN - Form 121 - and (2) Verification and Master Address List. The court continued the matter to October 20, 2021 at 11:30 am to be heard in conjunction with other matters relating to the bankruptcy case.

At the hearing, ~~XXXXXXXXXXXX~~

8. [21-22545](#)-E-13 DARYLL DESANTIS CONTINUED MOTION TO CONVERT
[SW-4](#) Scott Johnson CASE FROM CHAPTER 13 TO
CHAPTER 7
7-23-21 [28]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2021. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is ~~XXXXX~~.

This Motion to Convert the Chapter 13 bankruptcy case of Daryll Desantis (“Debtor”) has been filed by MedMen Enterprises, Inc. (“Movant” / “Creditor”), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor is not eligible for Chapter 13 relief because on the judgment obtained by Movant/Creditor in the State Court Action in the amount of \$10,384,288, plus pre- and post-judgment interest, which exceeds § 109(e) amounts of \$419,274 for unsecured debts and \$1,257,850 for secured debts.
- B. Debtor’s bankruptcy case was filed in bad faith misrepresented key facts to this Court, including, but not limited to, that his debts are \$1,000,000-\$10,000,000 when he personally owes the \$10.3 million plus Judgment to MedMen.
- C. Additionally, Debtor represented to the Court that his assets are just \$0-\$50,000 despite having just recently purchased the Folsom Residence for over \$1.5 million, and having just received \$9 million in cash from the wire transfer from ATEK (a company owned by Colburn, Debtor’s partner in the marijuana businesses) to Delsantro (an Arizona limited liability company with Debtor as its sole member and manager up until July 2021).
- D. Moreover, Debtor filed for bankruptcy in an inequitable manner to delay an evidentiary hearing on his contempt (for failure to deposit the \$10.3 million minimum surplus proceeds in the court’s registry) in the Arizona State Court Action.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 17, 2021. Dckt. 81. Debtor opposes such conversion on the basis that the prevalence of marijuana in this case warrants dismissal rather than conversion as the related activities are against federal law; the case is nothing more than a two-party dispute that is better dealt with in the state court; Debtor did not file the case in bad faith; and Debtor is not eligible for Chapter 13 relief under § 109(e).

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and

a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Here, Creditor MedMen seeks to convert the case to a Chapter 7 case arguing that Debtor is not eligible for Chapter 13 relief due to the over \$10 million judgment obtained in the Arizona State Court Action. Creditor also argues that Debtor is acting in bad faith because the bankruptcy case was filed with the purpose of delaying contempt proceedings at the state court action. As explained in the Motion to Dismiss, the dispute between Creditor and Debtor arise from the sale of two medical marijuana business owned and operation by Debtor and third party Charles Michael Colburn.

August 31, 2021 Hearing

At the hearing, the court continued the hearing to be conducted in connection with the hearing on the Debtor’s Motion to Dismiss this case.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 16, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is 11:30 a.m. on October 20, 2021 (specially set day and time).

MedMen Enterprises, Inc. ("Movant") seeks relief from the automatic stay to allow *Unisys Technical Solutions, LLC, et al. v. CSI Solutions, LLC, et al.*, and all related cross actions, Case No. CV2020-006195 pending in the Maricopa County Superior Court in the state of Arizona (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Dan Edwards to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor Daryll Desantis ("Debtor").

Movant argues that a contempt proceeding is exempt from the automatic stay as it falls under the government regulatory exemption pursuant to 11 U.S.C. § 362(b)(4). Motion, Dckt. 67, ¶ A:25-9. In the alternative, Movant argues that cause exists to lift the stay to allow the State Court to proceed with the contempt proceeding and sanction Debtor after Debtor failed to follow State Court orders and filed the instant bankruptcy case in bad faith. *Id.*, ¶ B:23-3.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 31, 2021. Dckt. 115. Debtor asserts that Movant has

failed to meet its burden for the court to lift the stay because the government regulatory exemption does not apply and Movant has failed to show that cause exists where no evidence has been presented that Debtor filed this case in bad faith.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. See *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

On September 10, 2021, the parties filed a Joint Status Conference requesting the court treat the hearing on the instant Motion as a Status Conference since the parties have been meeting and conferring with respect to the issues pending in the State Court Litigation and they are cautiously optimistic that an agreement can be reached which can resolve pending matters and the case. Dckt. 126.

September 14, 2021 Hearing

The Parties reported that they are working on a settlement to address their respective concerns, a bar on refile, and a procedure for the Debtor to seek relief from the court from said bar on refile if *bona fide* reasons for such exist. The court addressed with the parties that the procedure can be set up to have the relief sought in this case, from this judge. The procedure would include the notice period and expedited hearing date.

In light of the Parties making substantive progress to address these issues and to avoid needless cost and expense, the court will stay the briefing schedule for the motions to dismiss, convert, and transfer, and conduct a status conference on those matters (if the case has not already been dismissed) at the scheduled October 30, 2021 hearing date.

October 12, 2021 Hearing

At the hearing, counsel for Debtor and counsel for Movant appeared and advised the court that they were finishing documentation of the stipulation for dismissal of this case. They requested a continuance to the same date and time as other matters have been continued for case management purposes pending the dismissal of this case.

October 20, 2021 Hearing

At the hearing, **XXXXXXXXXX**